STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion v. North Shore Gas Company Proposal to implement Riders SVT and AGG, and revise Rider 2, Terms and Conditions, and Table of Contents	)))))))))))	Docket No. 01-0469

INITIAL BRIEF OF NORTH SHORE GAS COMPANY

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Dated at Chicago this
20th day of November, 2001

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Initial Brief of North Shore Gas Company

Pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission") Rules of Practice (83 Ill. Admin. Code §200.800) and the schedule and procedure established by the Administrative Law Judges on October 23, 2001, North Shore Gas Company ("Respondent" or "North Shore") hereby submits its Initial Brief in the above-captioned proceeding.

I. Background and Overview

North Shore, by its May 16, 2001, filing seeks to implement an optional transportation program designed for small volume Service Classification No. 2, General Service ("Rate 2"), customers and Service Classification No. 1, Small Residential Service ("Rate 1"), customers pursuant to proposed Rider SVT, Small

Volume Customer Transportation Service, and for participating suppliers, to be known as SVT Suppliers, pursuant to proposed Rider AGG, Aggregation Service. The proposed program is to be known as Choices For You[sm] (the "Program"). Respondent also proposed related changes to its Rider 2, Gas Charge, and its Terms and Conditions of Service. On June 27, 2001, the Commission entered a Suspension Order for the stated purpose of considering the propriety of the proposed riders and proposed revisions to other tariff sheets. Resp. Ex. A, pp. 3-4.

Respondent has offered transportation service, to all but Rate 1 customers, since 1984. At the time that Riders SVT and AGG were filed, there were 1,834 customers, including 1,808 Rate 2 customers, who received transportation services under Respondent's existing riders. However, there were approximately 11,000 Rate 2 customers in Respondent's service area eligible to receive transportation services who were not transporting gas under Respondent's existing transportation riders. Since June 1997, North Shore's affiliate, The Peoples Gas Light and Coke Company ("Peoples Gas"), has offered a substantially similar program to that filed by Respondent that gives lower usage customers an alternative to receive unbundled transportation services and suppliers the opportunity to provide a supply service under terms and conditions different than those in Respondent's existing transportation programs. Resp. Ex. A, pp. 3-5. Upon its implementation, Peoples Gas' program was the subject of a thorough one-year investigation by the Commission. <u>The Peoples Gas Light and Coke Company</u>, Ill.C.C. Docket 97-0297, Order dated August 12, 1998.

Based on customer interest in Peoples Gas' program and Northern Illinois Gas Company d/b/a/ Nicor Gas' ("Nicor Gas") Customer Select® program as well as the forthcoming availability of choice for electric utility customers, Respondent believed it was appropriate, at this time, to implement a small volume customer choice program that included its Rate 1 customers. Resp. Ex. A, pp. 5-6.

Respondent's proposals are designed to create a small volume transportation program that strikes a reasonable balance among the interests of customers who choose to participate and those who elect to receive a bundled service from Respondent as well as the entities who serve those customers -- the SVT Suppliers and North Shore. Resp. Ex. F, p. 2. Towards this end, North Shore proposed Rider SVT, which has the following significant attributes:

- customers would need to meet certain criteria in order to participate in the Program;
- enrollment in the Program would be directed through SVT Suppliers;
- all Program customers would, subject to generally applicable standards for participation, be eligible for Respondent's Budget Plan of Payment;
- the Program would include a grace period for customers who terminate with, or are terminated by, an SVT Supplier, during which the customer could choose another SVT Supplier;
- Rider SVT customers would not pay Respondent additional charges while participating in this Program; and

- Rider SVT customers would continue to receive a bill for utility charges and, if elected by the SVT Supplier, for both utility and SVT Supplier charges, from North Shore.

Resp. Ex. A, pp. 7-8; Resp. Ex. 1.

Proposed Rider AGG includes the following significant attributes:

- SVT Suppliers would need to meet certain requirements prior to participating in the Program;
- there would be no maximum limit to the number of customers that could be in a SVT Supplier's pool;
- SVT Suppliers would enroll customers in the Program by submitting the requests electronically to Respondent;
- Respondent would forecast the quantity of gas that the SVT Supplier would be required to deliver on a daily basis, however, there would be certain allowable daily and monthly delivery tolerances;
- SVT Suppliers would be allocated several days of storage based on the customers in the SVT Supplier's pool;
- SVT Suppliers would not be required to purchase firm transportation service from a pipeline or mandatory capacity release from Respondent; and
- the costs required to administer the Program would be collected from the SVT Suppliers.

Resp. Ex. A, pp. 12-13; Resp. Ex. 1.

Two other proposed changes were: (a) to revise Rider 2, Gas Charge, to add a new type of gas charge, the Aggregation Balancing Gas Charge, that would recover Respondent's costs associated with the purchased storage and balancing services that support the storage and balancing services provided to SVT Suppliers; and (b) to add a provision called "Operational Integrity" to its Terms and Conditions of Service to provide a tool for Respondent to manage more effectively gas deliveries to its citygates. Resp. Ex. A, pp. 21-22.

North Shore offered extensive and compelling support for its proposals through testimony and exhibits sponsored by Ms. Debra Egelhoff, Respondent's Supervisor of Rates, and Mr. David Wear, Respondent's Manager of Gas Supply Administration. These witnesses also demonstrated why certain Staff and intervenor counter-proposals were flawed or inappropriate for Respondent's system. Ms. Valerie H. Grace, Respondent's Director of Rates and Gas Transportation Services, refuted a specific rate proposal offered by Staff and the Governmental and Consumer Intervenors ("GCI"). However, when appropriate and consistent with the goal of balancing the interests of customers (participating and non-participating), SVT Suppliers and North Shore, North Shore incorporated into the Program changes and suggestions of Staff and intervenors.

In sum, North Shore's proposed implementation of the Choices For You^{sm} Program, with certain revisions proposed by Respondent during the proceeding, is fully supported by the record and should be approved.

II. Rider SVT

Rider SVT includes the terms and conditions of service applicable to the Rates 1 and 2 customers who elect to take service under the Program. Rider SVT includes the qualifications for taking service; pertinent definitions; rates;

provisions governing initiating, terminating or changing service; and billing requirements. To be eligible to participate in the voluntary Program, the only criteria that customers must meet are (i) an annual (or 365-day equivalent) usage of less than or equal to 50,000 billable therms (applicable only to Rate 2 customers as Rate 1 customers' consumption would be significantly less), (ii) an actual meter read within a period acceptable to Respondent, (iii) a contractual relationship with a participating supplier and inclusion in the supplier's pool, and (iv) regular access to the meter by Respondent. Resp. Ex. A, p. 8; Resp. Ex. 1.

The enrollment period would remain open, subject to enrollment limits on Rate 1 customers, once the Program is implemented. Customers would contract for service with a SVT Supplier of their choice, and the SVT Supplier would advise Respondent electronically that it wishes to add the customer to its pool. The customer would not submit notification directly to Respondent. The customer would receive from Respondent a letter confirming any change to the status of their participation in the Program (*i.e.*, a customer would receive a Confirmation of Enrollment letter when choosing an SVT Supplier; a Confirmation of Switching letter when switching suppliers within the Program; and a Confirmation of Termination letter when leaving the Program and returning to Respondent's retail sales service). Resp. Ex. A, p. 8; Resp. Ex. 1.

Contested issues associated with Rider SVT are limited to: (a) billing requirements; (b) Rate 1 enrollment limits; (c) the "grace period" during which a customer can choose another SVT Supplier when the customer terminates service with an SVT Supplier or the customer's SVT Supplier terminates service with the customer; and (d) the requirement that a customer remain with North Shore's bundled sales service for a total of twelve months, subject to the proposal to provide a grace period before this temporary stay requirement is effectuated. Other proposed elements of Rider SVT are uncontested and will not be addressed in this Initial Brief. They are fully supported in Respondent's testimony and exhibits.

A. Supplier Single Billing Is Not Warranted by the Record or Policy Considerations.

A customer that chooses to take service under the Program will remain a distribution service customer of North Shore and become a commodity service customer of an SVT Supplier. In other words, the customer will continue to be responsible for utility charges, other than the Gas Charge, and it will remain responsible for any arrearages accrued prior to switching to the SVT Supplier. Both Respondent and the SVT Supplier have an interest in providing service to their shared customer. A key difference between the two service providers is that, with respect to utility service, the customer will retain the rights provided under the Public Utilities Act ("Act") and the Commission's rules, and the customer will remain subject to the Act and those rules in order to continue receiving utility service. The SVT Supplier's relationship with the customer is not governed by these requirements.

However, Respondent's relationship with its customers is not defined solely by its status as a regulated entity. North Shore is also a business that values its relationship with its customers and seeks to continue to foster that relationship. Communicating with the customer, including through the monthly bill, is a means of fostering that relationship. It is a reliable vehicle for Respondent to communicate important information, such as payment options and safety messages, to its customers. Respondent appreciates the value of regular contact with customers, and, in stark contrast to the positions of Staff and intervenors, it would not force any SVT Supplier to forego directly billing its customers for its charges. Compelling Respondent to relinquish this regular point of contact with the customer, as the supplier single billing proposals advanced in this proceeding would do, would be a high price for Respondent to pay for offering choice to all customers. Resp. Ex. F, pp. 11-13.

Proposed Rider SVT provides that "[c]ustomers receiving service under this rider shall not be allowed to designate their SVT Supplier as the bill recipient for bills rendered by the Company." Resp. Ex. 1, Rider SVT, page 6 of 6, Section D. This provision is substantially identical to the tariff language in effect for Peoples Gas' program since 1997. Moreover, the Commission specifically approved this billing requirement for Peoples Gas in Docket No. 97-0297. In that order, the Commission stated that it "is very concerned about the information that will be provided to small-volume customers, as compared to customers taking transportation under [Peoples Gas'] pre-Pilot transportation programs who tend to be more sophisticated utility customers. The Commission also agrees that Peoples [Gas] has a right to bill its customers if it so chooses. Peoples [Gas'] bill would provide valuable cost data to the Pilot participant." The Peoples Gas Light and Coke Company, Order, dated August 12, 1998, in Ill.C.C. Docket 97-0297, slip op., p. 10.

Those findings and holdings continue to be relevant and are equally relevant to North Shore for many reasons. First, the Commission has articulated, in detail, its policies governing billing of regulated services. Supplier single billing, as proposed by Staff and intervenors in this proceeding, is not consonant with those policies. Second, supplier single billing, as proposed in this proceeding, is not compatible with the basic concepts of customer choice and competition. Instead, those proposals are skewed in favor of SVT Suppliers dictating billing choices, irrespective of customer preferences and Commission rules. Third, neither Staff nor intervenor proposals resolve the significant policy concerns that Staff raised in its own report on the use of agents by customers. Fourth, unlike the record in the Northern Illinois Gas Company d/b/a Nicor Gas Cons. Ill.C.C. Dockets 00-0620 and 00-0621 ("Nicor Gas") proceeding, North Shore introduced uncontroverted evidence of small volume customer billing preferences, based on a survey conducted by Peoples Gas in connection with its program and a substantially identical billing requirement.

1. Commission Billing Policies Do Not Support Staff and Intervenor Proposals.

The Commission has detailed rules governing, *inter alia*, the billing, by utilities, of regulated electric and gas utility charges. 83 Ill. Admin. Code Parts 410 (electric) and 500 (gas). The Part 500 rules entitled "Standards of Service for Gas Utilities" reflect the Commission's intention that customers receive specific billing information and include detailed requirements for bills rendered by gas utilities. The rules not only specify the information that must be included in the bill, but they also dictate the format in which the information must be presented. Utility tariffs are required to include a bill form. 83 Ill. Admin. Code §500.330. Additionally, in response to a 1997 Notice of Inquiry, the Commission directed gas utilities to provide customers ongoing notification when the filed gas charge exceeds the previous month's gas charge by 10% or more. Docket No., 97-NOI-1, NOI Manager's Recommendations. As Staff agreed, no such rules apply to alternative retail gas suppliers, such as the SVT Suppliers. R. 306. Staff proposed nothing that would apply the Commission's policies to SVT Suppliers.[1]

In Docket No. 99-0580, the Commission revised the electric utility counterpart to Section 550.330. It adopted revisions to Section 410.210 of its Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers. 83 Ill. Admin. Code §410.210. As the new title indicates, many of the rules, including the bill format requirements, now apply equally to electric utilities and alternative retail electric suppliers ("ARES"). In describing Staff's position supporting the rule, the Commission order stated that "Staff asserts that Section 410.210 recognizes that customers need billing information to make informed choices about their energy providers." Revision of 83 Ill. Adm. Code 410, Order, dated July 6, 2000, in Ill.C.C. Docket 99-0580, slip op., p. 23. The Commission concluded that "detailed billing information is necessary to enable customers to make informed choices about their electricity provider, particularly in this early

[1] In response to Respondent's alternative proposal to include supplier single bill requirements in its tariff, Staff would apparently support a requirement that SVT Suppliers taking service under the tariff be subject to Part 500 billing rules, but it is not evident that Staff would require SVT Suppliers to issue single bills pursuant to the tariff. ICC Staff Ex. 3.0, p. 12; R. 313.

stage of the development of a competitive electricity market in Illinois." Id. at p. 25. The Commission then rejected proposals to allow a customer and its supplier to enter into an agreement that establishes a different form and content for bills. Id.

Staff's proposals in this proceeding offer no rationale for the complete departure from the position Staff took in Docket No. 99-0580 and the rules that the Commission adopted in conformity with the Staff recommendations. Staff would allow Rider SVT customers to receive bills, including utility charges, from suppliers that need not comply in any way with the bill format requirements applicable to utilities. Staff witness Eric P. Schlaf recommended that suppliers and other parties be allowed to act as "account agents" for Rider SVT customers. ICC Staff Ex. 3.0, p. 2. Such agents would not necessarily be subject to any supplier single bill tariff that may be adopted in this proceeding. R. 313.

Respondent recognizes that in the Nicor Gas proceeding the Commission ordered Nicor Gas to allow supplier single billing through account agents. Nicor Gas, slip op. pp. 28-29. The Commission's radical departure from its own recent precedent in the electric utility rules, with no effort to distinguish the two cases, is inexplicable. While Commission decisions are not *res judicata*, this does not mean that the Commission has *carte blanche* to depart from precedent. Mississippi River Fuel Corporation v. Illinois Commerce Commission, 1 Ill. 2d 509 at p. 513 (1953); Abbott Laboratories, Inc. v. Illinois Commerce Commission, 289 Ill. App. 3d 705 at p. 715 (1997) ("Abbott Laboratories"). The Commission's decisions must be supported by substantial evidence and the abrupt and unexplained departure from prior practice calls into question the level of deference to which the Commission's decision would be entitled. Abbott Laboratories at pp. 713 and 715.

The Commission's bill format rules for gas and electric utilities coupled with its refusal to relax the rules applicable to electric utilities and ARES represent a clear policy that customers must receive certain information from utilities about utility charges. Staff and intervenor supplier single billing proposals cannot be squared with the Commission's conclusions that the information imparted to customers by the Parts 410 and 500 requirements is important to customers. If it is no longer the Commission's position that it is important and valuable to customers that utility charges be presented in a specified level of detail and in a particular format, then the Commission should revisit its Part 500 rules and remove the burdensome billing requirements imposed on gas utilities. Creating a gaping exception for agents, including SVT Suppliers, to issue bills with utility charges in any manner that they choose would be arbitrary and capricious.

2. Staff and Intervenor Billing Options Are Inconsistent with Customer Choice.

The supplier single billing proposals in the instant proceeding are asymmetrical, having an unfair bias in favor of the SVT Supplier. (Proposed Rider SBO, an alternative to the biased supplier single billing proposals introduced in Staff and intervenor direct testimony, will be discussed in Section II.B, *infra*.) Staff and intervenors would require Respondent to relinquish directly billing its customers upon the SVT Supplier advising North Shore that it was acting as the customer's billing agent.[2] By contrast, Respondent would have no ability, and does not seek the ability, to prevent SVT Suppliers from directly billing for the service they provide to customers. Furthermore, Respondent, because it would not enter into contracts with its Rider SVT customers, would not, unlike SVT Suppliers, have any practical way to market its proposed single billing service (the "LDC Billing Option") to customers. Resp. Ex. F, p. 14. Respondent advocated that the SVT Supplier should have the choice to bill its customers directly for its own services. Resp. Ex. F, p. 13. The obvious counterpoint to that proposition is that Respondent should retain the choice to bill its customers directly for utility charges. Respondent's proposal preserves both service providers' ability to bill their customers for the services each provides. However, the proposed LDC Billing Option is available if an SVT Supplier chooses to use it.

In commenting on proposed Rider SBO, it became evident that the asymmetry of the supplier single billing proposals extends to limiting what charges the SVT Supplier would include on its bill. Staff's and intervenors' enthusiasm for issuing bills that include utility charges is qualified by an unwillingness to bill for all outstanding utility charges. Instead, the SVT Supplier would only assume responsibility for billing for utility "distribution" charges that accrued after the SVT Supplier began supplier single billing. ICC Staff Ex. 6.0, pp. 6-7; *also see* New Power Ex. 2.0, p. 16. The avowed goal of customer

[2] Respondent assumes that the authority to act as the customer's billing agent would be included in the agreement between the customer and the SVT Supplier. Respondent does not propose to review, customer agreements with SVT Suppliers, other than for the limited purposes of audit. Resp. Ex. 1, Rider AGG, page 11 of 13, Section J.

convenience (ICC Staff Ex. 3.0, p. 9; New Power Ex. 2.0, p. 5) is abandoned when it would inconvenience the SVT Supplier. Respondent notes the glaring contrast with its proposed LDC Billing Option, which would impose no limits on the SVT Supplier's services or the accrual date of charges or even the types of services included on the single bill that Respondent would issue. Resp. Ex. F, pp. 13, 18, and 25-26.

3. Policy Concerns Regarding the Use of Agents Are Unresolved by Staff and Intervenor Billing Proposals.

Appended to Dr. Schlaf's testimony was a Staff report addressing the use of agents by customers. The report outlined several policy concerns that Dr. Schlaf agreed would be applicable to supplier single billing. Specifically, those policy concerns are: (a) non-payment of customer bills by the agent; (b) many agents would not be subject to Part 451 and Part 410; (c) informational messages may not be sent by the agent to the customer; and (d) consequences of agents acting irresponsibly. ICC Staff Ex. 3.0, Attach. 1, pp. 6-8; R. 305-309. The report also described certain legal considerations that are unresolved by Staff and intervenor proposals. ICC Staff Ex. 3.0, Attach. 1, pp. 8-9. Like the policy concerns, the legal concerns stem from the Commission's lack of jurisdiction over alternative retail gas suppliers.

First, as the Staff report explained, failure by the agent to make timely payments to the utility could result in the customer being assessed late payment charges or even having service disconnected. The customer, not the agent, would bear the brunt of the consequences of the agent's misdeed.

Second, Part 451 is the Commission's rules on certification of ARES. Staff's concern was that agents may not be certified ARES. There is no counterpart for alternative retail gas suppliers. Thus, there is no way for Staff's policy concerns about lack of certification for agents to be addressed because the Commission lacks jurisdiction to regulate non-utility gas suppliers in any manner. As discussed in Section II.A.1, *supra*, the same holds true with respect to the inapplicability of the Commission's billing requirements under Part 410 (Part 500 for the gas industry).

Third, the Commission's lack of jurisdiction over non-utility suppliers also means the Commission has no effective means for compelling suppliers issuing single bills to include important messages about utility service.

Finally, the Commission's lack of jurisdiction over non-utility suppliers prevents the Commission from interceding when an agent acts irresponsibly vis-à-vis its principal, *i.e.*, the end use customer.

In advocating supplier single billing through account agents, Staff and intervenors do not address, much less resolve, these policy concerns. Moreover, Staff acknowledged that such billing could be harmful to customers. It would be wholly at odds with the Staff's own report and Dr. Schlaf's testimony for the Commission to mandate supplier single billing without implementing effective steps to remedy the policy concerns identified by Staff. To the extent Staff's solution is to impose a quasi-regulatory function on Respondent through Staff's proposed Standards of Conduct, that is not a credible means for addressing policy concerns as well as legal concerns that principally arise from the limited scope of the Commission's jurisdiction.

4. Peoples Gas' Small Volume Customers Have Demonstrated an Interest in Receiving a Single Bill from the Utility and There Is No Reason to Believe This Preference Would Not Apply to North Shore.

As discussed above, Respondent recognizes that the Commission recently held that Nicor Gas must permit supplier single billing through what the order described as "account agency." <u>Nicor Gas</u>, slip op. pp. 28-29. However, based on the recitation of evidence included in that order, it appears that there was no specific evidence of customer preferences introduced. By contrast, the record in the instant proceeding includes uncontroverted evidence of Peoples Gas' customer preferences about single billing that were acquired in a customer survey in response to the implementation of a substantially identical billing provision by Peoples Gas. There is no reason to believe that the data from this survey would not be relevant to assessing the preferences of North Shore's customers.

As Peoples Gas promised the Commission in Docket No. 97-0297, issues related to billing requirements were part of Peoples Gas' investigation and research about the pilot program that the Commission approved. In particular, Peoples Gas conducted customer surveys to assess customer attitudes about the Program, including the billing requirement. The great majority -- approximately 85% -- of small volume customers eligible for service under Peoples Gas' program stated that they preferred to receive a single bill for service, and they overwhelmingly preferred (76%) that this single bill come from the utility. Resp. Ex. A, p. 12; Resp. Ex. C, pp. 22-23; Resp. Ex. F, pp. 11-12. Respondent has no basis for believing that these survey results are no longer valid. Resp. Ex. C, p. 23. Neither Staff nor any party presented contrary evidence of billing preferences by small volume customers.

However, to the extent customer preference is driving the Commission's decision on this issue and the Commission finds the survey results not compelling, the logical response is not to force North Shore to relinquish its billing function based on the SVT Suppliers' choices. Instead, the Commission should direct that a new customer survey be undertaken directed to North Shore's customers to see if customers support such a result.[3] Resp. Ex. C, p. 23. Moreover, as discussed above, customer preference is not the only consideration in determining the appropriate billing requirements for a small volume customer choice program. There are important policy considerations that must factor into that decision.

5. Conclusions

In sum, Respondent's proposed Rider SVT billing requirement that "[c]ustomers receiving service under this rider shall not be allowed to designate their SVT Supplier as the bill recipient for bills rendered by the Company" is amply supported. It allows both service providers -- Respondent and the SVT Supplier -- to issue bills for their respective services. It accommodates a single billing service through the optional LDC Billing Option, but it forces neither party

[3] Alternatively, if the Commission compels Respondent to implement some form of supplier single billing, it should do so through approval of Respondent's proposed Rider SBO, including the requirement that the customer affirmatively select its billing service. Resp. Ex. C, p. 23.

to relinquish the billing function that a service provider may consider to be a critical element of its customer service. It is consistent with Commission billing policies as well as expressed concerns about the role of agents. Finally, it is supported by customer preference data that were obtained in response to questions about this same issue in Docket No. 97-0297.

B. If the Commission Mandates Supplier Single Billing, All Such Billing Should Be Conducted Pursuant to Respondent's Proposed Rider SBO.

In its rebuttal testimony, Respondent sponsored a *pro forma* Rider SBO, Supplier Bill Option Service. In Ms. Egelhoff's surrebuttal testimony, in response to testimony of Staff and intervenors, Respondent proposed certain revisions to Rider SBO. Respondent does not support the adoption of supplier single billing for the reasons set forth in Section II.A, *supra*, as well as the reasons detailed in Ms. Egelhoff's testimony. Nonetheless, were the Commission to order Respondent to allow supplier single billing, all such billing should be conducted pursuant to Rider SBO. In other words, Rider SBO would apply to all SVT Suppliers issuing supplier single bills under the Program; there would be no distinction for so-called "account agents." There is no basis for treating customers of account agents differently and providing such customers less protection than customers receiving a bill issued pursuant to Rider SBO. Indeed, it is that unwarranted distinction that gives rise to many of the policy concerns identified by Staff in its discussion of account agents (*see* ICC Staff Ex. 3.0, Attach. 1). Resp. Ex. C, pp. 23, 30; Resp. Ex. F, p. 11.

As a prefatory matter, if the Commission requires implementation of Rider SBO, this service could not be available on May 1, 2002, which is Respondent's proposed implementation date for the Program. Depending on the extent to which the Commission requires Respondent to modify the Program, the implementation date for Rider SBO could range from six to eighteen months after a final order is issued in this proceeding. *See* Section VI.B, *infra*.

Key features of proposed Rider SBO address the circumstances under which Rider SBO would be used for billing. Customers must affirmatively select their billing preference when they enroll with an SVT Supplier. SVT Suppliers would have the option to offer: (1) supplier-issued single billing, the LDC Billing Option, and dual billing; (2) the LDC Billing Option and dual billing; or (3) only dual billing. Compliance would be subject to audit; this is comparable to Respondent's proposed right to audit to ensure that a customer has established an agency relationship with and has contracted for supply service with an SVT Supplier. If the customer is silent on its choice of a billing option, separate bills would be issued by each of Respondent and the SVT Supplier for their respective charges, *i.e.*, dual billing. Resp. Ex. C, pp. 27-28; Resp. Ex. 6.

If the Commission determines that supplier single billing is appropriate, then a customer choice program would logically include giving customers the opportunity to choose the billing option that is most acceptable to them. A customer's decision to choose an agent to provide gas supply service does not automatically translate into a decision to have the agent bill for utility service. Moreover, customers may not be aware that they have other billing options. The affirmative choice requirement of Rider SBO provides a means for educating customers about their billing service choices. It is ironic that Staff and intervenors, who endorse customer choice and support disseminating educational information on choice of suppliers of gas for customers, would not support giving the customer both information about and a choice of billing options. Resp. Ex. F, p. 12.

There should be two key qualifications to the customer's right to choose supplier single billing. First, complex and costly billing issues would arise if, as Staff and intervenors proposed, only utility charges that accrued after a customer selected supplier single billing could be included on a Rider SBO bill. To mitigate these issues, only customers that are current with their utility charges should be eligible for Rider SBO service. Second, if the customer accrues arrearages with Respondent that are sixty days or older, Respondent should have the right to remove the customer from Rider SBO. The customer's billing method would be moved to the SVT Supplier's default option, *i.e.*, either dual billing or the LDC Billing Option. Once a customer becomes delinquent for more than sixty days the customer faces the potential threat of disconnection. Returning the customer to a billing method under which it receives direct billing communications from Respondent would facilitate the credit and collection process and help protect customers from disconnection. Resp. Ex. F, pp. 16-17.

Under proposed Rider SBO, the SVT Supplier would electronically submit, by electronic funds transfer, customer payments to Respondent. Resp. Ex. C, p. 30; Resp. Ex. 6. If the SVT Supplier selected what Staff called the "guaranteed payment" option, remittance to Respondent would be established pursuant to the Commission's rules, codified at 83 Illinois Administrative Code Part 280, and

Respondent's Schedule of Rates. If the SVT Supplier selected the payment option under which it would remit customers' payments to Respondent after receiving payment from the customer, then payment should be due within one business day of such receipt. Resp. Ex. F, p. 14; Resp. Ex. 6. If the customer makes a partial payment, such payment should first be applied to outstanding utility charges to protect the customer from service disconnection for non-payment of utility charges. Resp. Ex. F, p. 15.

Finally, SVT Suppliers must meet certain technical qualifications prior to providing service under Rider SBO. The SVT Supplier would be required to test and demonstrate its ability to accept and transmit billing data electronically on a timely basis. The SVT Supplier's bill must present utility charges in accordance with the billing requirements in Part 500. This would tend to address the customer information issues discussed in Sections II.A.1 and II.A.3, *supra*. Resp. Ex. C, p. 30; Resp. Ex. 6.

In sum, while supplier single billing is not supported by the record in this proceeding or relevant Commission policies, a decision to mandate supplier single billing should use Respondent's proposed Rider SBO as the vehicle for all such billing to Rider SVT customers. Proposed Rider SBO addresses major concerns that have been raised by Staff and intervenors while preserving an administratively manageable way for Respondent to bill and be paid for its services. However, it is critically important that Respondent not be compelled to relinquish its billing function to a third party, absent an express election by an informed customer who wants this arrangement. Resp. Ex. F, p. 3.

C. Phased-In Enrollment of Rate 1 Customer Eligibility Strikes a Reasonable Balance Between Customer Choice and Operational Considerations That Affect All Customers.

All Rate 1 customers within Respondent's service area would have the opportunity to choose to participate in the Program. However, due to gas supply planning considerations, the number that can enroll within the first three years of proposed Rider SVT's effective date should be limited. In the first year (May 1, 2002, to April 30, 2003), up to 20,000 Rate 1 customers could participate. This cumulative enrollment threshold would increase to 30,000 customers in the second year (May 1, 2003, to April 30, 2004) and to 40,000 customers in the third year (May 1, 2004, to April 30, 2005). Resp. Ex. A, p. 6; Resp. Ex. 1, Rider SVT, page 1 of 6, Section A. Enrollment would be on a first come, first served basis. R. 56-57. Any increases in these thresholds would be made through a filing with the Commission. Resp. Ex. F, p. 9.

Enrollment limits are necessary for Respondent to be able to accommodate the changing gas supply requirements on its system in an efficient manner that balances the interests of both participants and non-participants in the Program. Generally, Respondent enters into contracts with terms of one to three years for firm transportation, purchased firm storage and gas supply, but it does have firm contracts with longer terms. Respondent needs these assets to meet the annual, seasonal and daily gas supply requirements of its customers. The design-day supply portfolio also includes a reasonable reserve margin that provides for, *inter alia*, the possibility of supply loss due to the interruption of firm service. Respondent makes a determination of the amount of assets to contract for by projecting not only demand requirements, but also migration of sales customers to transportation service. Resp. Ex. B, pp. 5-6; Resp. Ex. D, p. 6.

The proposed enrollment limits would allow Respondent a reasonable length of time to realign its assets with its remaining customer base and to minimize the possibility of cross-subsidization of the Program by the customers who choose to remain on the retail sales service. Resp. Ex. B, p. 6. The phased-in approach should be approved as filed.

D. The Proposed Sixty-Day Grace Period Is a Valuable Right Under the Program.

Currently, under Respondent's large volume transportation programs, a customer can choose to leave the Program and resume purchasing gas from Respondent as a retail sales customer. However, the customer is required to remain with Respondent as a retail sales customer for a minimum of twelve months. In proposed Rider SVT, Respondent opted to soften this requirement with a sixty-day grace period. The customer would have sixty days from the date the customer voluntarily leaves the Program, or is terminated by an SVT Supplier, to return to the Program by choosing another SVT Supplier. If the customer does not choose another SVT Supplier within the grace period, the customer would remain on North Shore's retail sales service for an additional ten months (the "temporary stay requirement," *see* Section II.E, *infra*). Resp. Ex. A, p. 9. The sixty-day grace period encompasses the number of days from the initial date of termination from the Program to the date Respondent receives a new, valid enrollment request for the customer from an SVT Supplier. Thus, as long as Respondent accepts the request for enrollment within the sixty-day grace period, the customer would be able to return to the Program even if the next meter read date is more than sixty days from the earlier termination date. Resp. Ex. F, p. 10. This feature of the Program is reasonable and should be approved.

E. The Temporary Stay Requirement Is an Appropriate Adjunct to the Grace Period.

As noted in Section II.D, *supra*, proposed Rider SVT includes a twelve-month minimum stay requirement for customers that return to retail sales service from Rider SVT. This temporary stay requirement is a valuable gas supply planning tool. Respondent proposed to temper the stay requirement with both a grace period and a waiver for Rate 1 customers of the stay requirement until the Rate 1 enrollment limit is reached (Resp. Ex. F, p. 9), but a stay requirement is a necessary control to provide Respondent a measure of certainty in its gas supply planning process. Absent such a requirement, customers could bounce back and forth between the utility and SVT Suppliers at any time. Respondent's gas supply planning process would need to assume that, at any time, a customer could return to the utility and, just as quickly, could switch to an alternative supplier. This is patently inefficient and could result in Respondent arranging for supply and capacity for customers whose return to the utility turns out to be very brief or making belated adjustments to its portfolio to accommodate unexpected load requirements. Resp. Ex. D, pp. 7-8. Eliminating the temporary stay requirement could well have detrimental effects on gas supply planning and procurement and result in cross-subsidization of the Program by retail sales customers. Resp. Ex. D, p. 2.

III. Rider AGG

Rider AGG includes the terms and conditions of service applicable to all SVT Suppliers that contract to provide gas supply to Rider SVT customers. The rider includes pertinent definitions; describes the SVT Supplier application process; sets forth the rates and charges applicable to SVT Suppliers; describes delivery obligations, storage availability and related procedures; and specifies information that the SVT Supplier must transmit to Respondent to enroll a customer. Resp. Ex. A, pp. 12-13; Resp. Ex 1.

An SVT Supplier would be required to complete an application process that includes providing credit-related information and a signed application. The supplier would pay the Application Charge, discussed in Section III.D, *infra*, at this time. The Company would use the information, as well as a credit report, to determine what financial assurances (*i.e.*, letter of credit, parent guarantee or deposit) would be required. The SVT Supplier would also be required to sign a contract with the Company. Resp. Ex. A, p. 13.

An SVT Supplier must have a minimum of 50 customers in a pool, but there would be no cap on the total number of customers in a single pool. SVT Suppliers can choose to have more than one pool under the Program, but charges and gas supply rules would apply to each pool separately. Resp. Ex. A, pp. 13-14.

Customers would contract directly with an SVT Supplier. The SVT Supplier would submit customer enrollment requests to Respondent through its electronic bulletin board. Respondent would return confirmation to the SVT

Supplier that the request for enrollment was accepted or rejected. The SVT Supplier would receive additional customer information for each accepted enrollment (*i.e.*, mailing and service addresses, 24-month usage history, bi-monthly billing indicator). For each rejected enrollment, the SVT Supplier would receive a reason (or reasons) for the rejection. The SVT Supplier would use this same electronic process to terminate a customer from its pool. Resp. Ex. A, p. 14.

Contested issues associated with Rider AGG are: (a) Required Daily Delivery Quantity calculation; (b) level of daily and monthly tolerance, including the manner of determining the amount of tolerance available on any day; (c) imbalance resolution mechanism; (d) charges applicable to SVT Suppliers, including whether there are savings that should offset those charges; (e) quantity of storage available to SVT Suppliers; (f) SVT Supplier Standards of Conduct; and (g) method of determining the amount of performance assurance provided by SVT Suppliers to Respondent. There appears to be no dispute concerning Respondent's: proposal to have no firm transportation requirement; withdrawal of a proposal to require an SVT Supplier's bill to be based on Respondent's billing data; proposal to permit SVT Suppliers to enroll customers through any means provided that Respondent can verify that the SVT Supplier is the customer's authorized agent; and other provisions in the rider. These uncontested issues will not be addressed in this Initial Brief. They are fully supported in Respondent's testimony and exhibits.

A. Respondent's Required Daily Delivery Quantity Calculation Method is Reasonable.

The Required Daily Delivery Quantity ("RDDQ") would be the quantity of gas, determined by Respondent each day, that, subject to available tolerances, the SVT Supplier would be required to deliver to Respondent to serve its Rider SVT customers. The RDDQ calculation would be a daily calculation using weather forecast data to enhance accuracy and minimize cash-outs. Resp. Ex. C, pp. 16-17.

Respondent would calculate the RDDQ by incorporating the unique heating and non-heating factors for each customer in the SVT Supplier's pool, actual weather forecasts, an adjustment for unaccounted for gas and a storage component. The storage component would be determined as follows. During the injection period (April through October) and the withdrawal period (November through March), the storage activity for the month would be the "Pool Maximum Storage Quantity" multiplied by a percentage determined by Respondent. During the injection period, the Pool Maximum Storage Quantity would be determined each month based on the contract rights of the customers in the SVT Supplier's pool. In other words, additions to and deletions from the pool would be taken into account. During the withdrawal period, the Pool Maximum Storage Quantity would be the quantity that was injected during the preceding injection period. This ensures that 100% of the inventory would be withdrawn by March 31. Resp. Ex. 1; Resp. Ex. A, pp. 14-15; Resp. Ex. C, pp. 11-13.

The percentage by which the Pool Maximum Storage Quantity would be multiplied would be based on Respondent's storage plan. Numerous operational considerations would be taken into account when Respondent develops its storage plan. This plan is a composite of all storage activity in Respondent's portfolio, *i.e.*, Respondent's purchased storage from pipelines and other third party storage operators. Respondent would provide SVT Suppliers with this composite schedule around February 15 of each year. Respondent's plan, and therefore, the percentages that determine the storage activity in the RDDQ calculation, may change from one year to the next. However, once the percentages are provided to SVT Suppliers by the date indicated, Respondent will not change them for the duration of the plan year. Resp. Ex. D, pp. 8-9.

Staff witness Charles C.S. Iannello proposed modifying the RDDQ calculation to include some sort of adjustment for meeting the heat sensitive portion of customers' load through storage. ICC Staff Ex. 1.0, p. 12. The proposal should be rejected. First, his proposal is ill-defined. Mr. Iannello provided insufficient explication of how Respondent would implement a heating degree day adjustment. Not only did this make it difficult for Respondent to respond to his proposal, it calls into question how the Commission could order Respondent to implement a proposal for which the record lacks a clear description.

Second, the principal support for Mr. Iannello's proposal is that this method, which is purportedly used by Nicor Gas, is, in Mr. Iannello's opinion, superior to Respondent's proposal. Mr. Iannello did not show that Respondent's proposed RDDQ calculation was flawed or inappropriate, much less unjust and unreasonable; he simply testified that he believed Nicor Gas' method would provide additional benefits to SVT Suppliers. ICC Staff Ex. 1.0, p. 12. *Also see* Section VI.A, *infra*.

Finally, to the extent Respondent was able to understand Mr. Iannello's proposal, Respondent showed why its RDDQ proposal was appropriate, provided benefits to SVT Suppliers and protected retail sales customers from inappropriately subsidizing SVT Suppliers by varying storage use in a manner that had fewer repercussions for the use of storage for retail sales customers. In particular, Respondent showed that the manner in which Respondent incorporates storage activity into the RDDQ calculation provides a measure of certainty to SVT Suppliers, and certainty is desirable for Respondent and SVT Suppliers. Resp. Ex. C, pp. 12-13; Resp. Ex. F, pp. 5-6. For example, under Respondent's approach, the SVT Supplier would know the shape of the annual storage injection and withdrawal plan. Thus, the SVT Supplier could take full advantage of seasonal hedges without concern that Respondent would change those baseload requirements. By contrast, a storage plan that included a heating degree-day adjustment would be subject to modification on a daily basis throughout the winter period, making an SVT Supplier's forward hedges subject to financial losses should they need to be unwound. Resp. Ex. D, p. 11.

Respondent's proposed RDDQ calculation method is reasonable and provides certainty to SVT Suppliers. It should be approved as filed.

B. The Level of Respondent's Proposed Daily and Monthly Tolerances Are Properly Based on the Resources Supporting This Service to SVT Suppliers.

1. Tolerance Level

Respondent proposed to offer flexibility in its SVT Supplier delivery process by providing a tolerance. Respondent recognized that it may be administratively difficult in some instances for SVT Suppliers to deliver an exact quantity that is subject to change each day as a result of the weather forecast or the addition or termination of customers in an SVT Supplier's pool. Respondent's capacity assets include sufficient flexibility to support a limited tolerance. The tolerance would be applied to the RDDQ. Deliveries within the tolerance would not be subject to imbalance charges. Resp. Ex. A, p. 15-16; Resp. Ex. F, p. 7. Proposals to increase the tolerance ignore the limitations on the assets supporting the tolerance and misapprehend the way in which other assets underlying the Program are used for the benefit of SVT Suppliers. Such proposals should be rejected.

The level of the daily tolerance would differ depending on the type of day. Specifically, on Non-Critical Days, an SVT Supplier could deliver its pool RDDQ, plus or minus three percent of the pool RDDQ. On a Critical Supply Shortage Day, an SVT Supplier could deliver up to three percent over the pool RDDQ. There would be no allowance for an under-delivery on a Critical Supply Shortage Day. On a Critical Supply Surplus Day, an SVT Supplier could deliver as much as three percent under the pool RDDQ, with no tolerance for an over-delivery. In other words, on Critical Days, the tolerance would only be available to the extent deliveries that varied from the RDDQ would not be expected to be detrimental to

Respondent's system. An SVT Supplier's imbalances would need to be within plus or minus one percent of the pool's aggregate monthly RDDQ by the end of each month to avoid the $1.00 end-of-month imbalance charge. Resp. Ex. A, p. 15; Resp. Exs. 1 and 5.

The proposed tolerances are modeled after, and are supported by, those of Natural Gas Pipeline Company of America ("Natural"), which is the only pipeline serving Respondent that offers a tolerance. Respondent receives from Natural a daily tolerance of 5% and a monthly tolerance of 2% based on confirmed deliveries, with limitations during critical times and operational flow order situations. It is these pipeline services that support Respondent's ability to offer a tolerance. Staff and intervenor arguments that various storage and balancing services could contribute to the tolerance available to SVT Suppliers disregard how those services are used for the Program. ICC Staff Ex. 5.0, p. 11; GCI Ex. 2.0, pp. 8-9; Dominion Retail, Inc. Ex. 1.0, pp. 11-12. As discussed in Section III.E, *infra*, these services are used to support a portion of the storage service provided to SVT Suppliers and to balance deliveries and requirements for Rider SVT customers. Resp. Ex. G, p. 7. Additionally, to the extent Staff and intervenor support for a higher tolerance is predicated on what Nicor Gas is able to offer, that argument hardly warrants a reply. Mr. Iannello agreed that Nicor Gas' proposed tolerances were based on Nicor Gas' operational and reliability concerns. R. 243. There is no evidence that the operational and reliability considerations pertinent to Nicor Gas' decision to offer a higher tolerance are shared with North Shore. To the contrary, the two systems are dissimilar in many key respects. Resp. Ex. D, pp. 2-3; Resp. Ex. G, pp. 3-4; R. 172-176.

Accordingly, it is only the transportation services from Natural that can be the basis for the proposed tolerances. However, it is possible that only a portion of the supplies delivered as part of this Program will come from Natural, and because Natural is the only pipeline interconnecting with Respondent's system that offers such tolerances, the daily tolerances offered under the Program have been reduced from what Natural offers. Consequently, under the Program, the daily tolerance must be less than 5% and the monthly tolerance must be less than 2% if SVT Suppliers are to receive services commensurate with their cost contribution. Given that Natural is one of two potential pipelines available to SVT Suppliers and that Respondent is offering tolerances that are at least 50% of what it receives from Natural, the proposed 3% daily tolerance and 1% monthly tolerance are generous and should be approved. Resp. Ex. B, p. 5; Resp. Ex. D, p. 4.

2. Determination of Tolerance

Respondent proposed that the daily tolerance percentage be applied to the RDDQ to determine the amount of tolerance available on any day. This method is appropriate for several reasons. First, it is consistent with the tolerance available from Natural, which is based on deliveries. Since it is this tolerance that supports the Program tolerance, using a consistent benchmark -- deliveries -- for determining the amount of tolerance is appropriate. Resp. Ex. D, p. 4. Second, the manner in which Respondent calculates the RDDQ -- adjusting for weather and customer enrollment changes -- makes it a sound basis for determining the tolerance. Third, to the extent the alternative proposal from Staff is based merely on what the Commission approved for Nicor Gas, there is no evidence in this record that this method is appropriate for Respondent or that Respondent's method is flawed.

Staff again recommends that Respondent adopt a method that was proposed by and approved for Nicor Gas. There is little explanation for how Respondent would implement the proposal. However, it is Respondent's understanding that Staff is proposing that the tolerance during the months of November through April be based on some estimate of average usage of the pool and during the months of May through October be based on some estimate of average deliveries for the month.[4] ICC Staff Ex. 1.0, pp. 15-16. This method is unsound, given the components of Respondent's RDDQ calculation.

Under Respondent's proposal, Respondent would adjust for actual weather forecasts and therefore, on a colder than average day, the SVT Supplier's daily tolerance range, even based on only deliveries (and not estimated consumption), would be greater than that under Mr. Iannello's proposal using estimated consumption. On the other hand, on a warmer than normal day, the RDDQ would decline accordingly, such that Respondent and its retail sales customers would not be supporting a larger than appropriate tolerance. To

[4] The rationale for the November through April and May through October periods is unclear, other than Staff's fixation on the Nicor Gas program. The withdrawal period under Respondent's Program is November through March and the injection period is April through October. Resp. Ex. 1.

illustrate, assume that a 3% tolerance is in effect on a non-critical January day and, under Respondent's approach, storage activity is 1,800 therms:

	Nicor Gas			North Shore		
	estimated usage (therms)	tolerance (therms)	tolerance (%)	RDDQ (therms)	tolerance (therms)	tolerance (%)
average	10,000	300	3%	8,200	246	3%
cold	18,600	**300**	2%	16,800	**504**	3%
warm	6,200	300	5%	4,400	132	3%

Additionally, Respondent would also adjust for actual enrollment and termination of customers within the SVT Supplier's pool during the month. As an SVT Supplier enrolls more customers, its daily tolerance range would increase accordingly under Respondent's method but not under Mr. Iannello's. Likewise, if enrollment declines, the RDDQ would decline accordingly, such that Respondent and its retail sales customers would not be supporting a larger than appropriate tolerance. Resp. Ex. C, p. 14; Resp. Ex. F, p. 6; Resp. Ex. 9.

In sum, Respondent's method of basing the tolerance on the RDDQ is consistent with the assets underlying the tolerance and provides an amount of tolerance that adjusts in concert with changes to the RDDQ caused by factors such as weather and customer enrollment.

C. Respondent's Imbalance Charges Provide Appropriate Incentives to SVT Suppliers.

1. Imbalance Charges

Respondent proposed under- and over-delivery charges, which are intended to provide proper incentives for SVT Suppliers to deliver gas consistent with the RDDQ and the available tolerances, mirror the sorts of charges to which Respondent is exposed under its pipeline services and recognize appropriate distinctions between critical days and non-critical days as well as between different types of critical days. Revenues from these charges, pursuant to Respondent's Rider 2, Gas Charge, would be flowed through to customers in their entirety. It is important to remember that an SVT Supplier need only deliver gas within the daily tolerance to avoid these charges. In other words, the charges are not for a service that the SVT Supplier is required to purchase; the charges are assessed when an SVT Supplier fails to meet its obligations under the tariff. Resp. Ex. A, pp. 18-19; Resp. Ex. C, p. 5; Resp. Ex. F, pp. 6-7.

Respondent's proposal reflects the need for charges associated with deliveries outside available limits to tie to current market prices. As Respondent is not proposing a firm transportation requirement, the importance of market-based daily financial incentives to meet the daily delivery requirement is heightened. Moreover, given that the market price for gas can rise to levels that exceed the Non-Critical Day Charge (as demonstrated during the 2000-2001 winter), the addition of a daily imbalance charge tied to market indices is essential to minimize economic incentives to not perform under the Program; the

Non-Critical Day Charge alone could well be inadequate. Resp. Ex. A, pp. 19-20.

The imbalance charges would be imposed when an SVT Supplier delivers a quantity of gas less than or in excess of the pool's RDDQ that exceeds the applicable delivery tolerance. The resulting imbalance would be assessed a charge that consists of the sum of the applicable imbalance charge and the applicable Non-Critical Day Charge or Critical Day Charge. The imbalance charges are derived from market indices for the Chicago citygate. Imbalance charges are tiered such that increasing underage imbalance levels (deliveries less than the RDDQ, adjusted for the available tolerance) trigger higher payments by the SVT Supplier to Respondent and increasing overage imbalance levels (deliveries in excess of the RDDQ, adjusted for the available tolerance) trigger lower payments by Respondent to the SVT Supplier. The applicable Non-Critical Day Charge and Critical Day Charge, which are based on Respondent's currently effective unauthorized use charges, are paid by the SVT Supplier to Respondent, irrespective of whether the deliveries result in an overage or underage. Resp. Ex. A, pp. 18-19; Resp. Ex. 5.

Respondent's proposal is modeled on interstate pipelines' imbalance charge mechanisms. Pipelines recognize that, as imbalances (over or under) increase, the associated charges should reflect the increasing magnitude of the imbalance. The Federal Energy Regulatory Commission ("FERC") has approved such charges to create reasonable economic incentives as a tool to protect system reliability. Likewise, Northern Indiana Public Service Company, a local distribution company operating in the Chicago area market, has in place similar imbalance charges. Resp. Ex. C, p. 7; Resp. Ex. F, pp. 6-7; R. 115.

As with other aspects of Respondent's proposal, Staff again advocated the adoption of the imbalance charges proposed by and approved for Nicor Gas. ICC Staff Ex. 1.0, pp. 16-18. Aside from mirroring the Nicor Gas approach, Staff did not support why its proposal would be appropriate for Respondent, nor did it show why Respondent's proposal was flawed. By contrast, Respondent showed that its proposal was a sound way to address imbalances. The Nicor Gas approach treats a small imbalance equally with a substantial imbalance, and that is what Respondent tried to avoid with its proposal. The more flagrant the abuse, *i.e.*, as the disparity between what the SVT Supplier is required to deliver under Rider AGG and what the SVT Supplier actually delivers increases, the charges associated with that non-performance should increase.

The FERC has concluded that this approach is reasonable. Addressing Transcontinental Gas Pipe Line Company's ("Transco") imbalance charge structure, the FERC recently held that:

> The Commission has previously approved tiered cash out mechanisms and will do so in this proceeding. Tiered cash out mechanisms provide for a varying degree of penalty based upon the degree to which a shipper is out of balance. The penalty is proportionate to the burden on Transco's system, so the shipper that is further out of balance incurs a greater penalty. A tiered cash out mechanism encourages shippers to remain in balance, thereby promoting the ability for other shippers to receive service. A system that is out of balance may impinge on the ability of others to receive service.

Transcontinental Gas Pipe Line Corporation, 96 FERC ¶61,352 at p. 62,313 (2001). Respondent's proposal is consistent with maintaining system reliability by creating the types of incentives encouraged by the FERC. The Nicor Gas approach is a poor substitute for the more finely tailored tiers proposed by Respondent.

2. Imbalance Carry Forward

Under Respondent's proposal, imbalances would be resolved each month. The monthly cash-out consists of two components, *viz*., a charge applicable to differences between the pool's "Monthly Adjusted Deliveries"[5] and aggregate pool consumption and a charge applicable to violations of the monthly tolerance. In other words, the same quantity would not be subject to both a daily and monthly cash-out. Respondent's proposal is appropriate and should be approved.

The monthly cash-out charge applicable to delivery/consumption discrepancies would not be tiered. Unlike imbalances, the SVT Supplier cannot manipulate this imbalance. Also, a charge of $1.00 would be applied to each delivered therm greater or less than the required monthly delivery quantity ("RMDQ"), which is the sum of the RDDQs for the month, plus or minus the one percent monthly tolerance. For example, if the RMDQ for a particular month is 1,000 therms and total supplier Monthly Adjusted Deliveries for the month are 1,030 therms, the quantity in excess of one percent of the RMDQ is 20 therms

[5] "Monthly Adjusted Deliveries" mean deliveries that are adjusted to exclude daily deliveries outside the applicable tolerance to ensure that the same deliveries are not subject to two cash-outs. Resp. Ex. 1, Rider AGG, page 2 of 13, Section A.

(1,030 therms – 1,010 therms = 20 therms). The 20 therms would be subject to the cash-out charge plus $1.00 per therm. The 10 therms within the monthly tolerance would be subject only to the cash-out charge. The SVT Supplier can avoid the $1.00 charge by keeping its monthly deliveries within the tolerance. Resp. Ex. A, pp. 20-21.

Staff and intervenors proposed an imbalance carry forward proposal under which, according to Staff witness Iannello, four days of storage would be "set aside" for imbalance resolution purposes. ICC Staff Ex. 1.0, p. 21. Based on its understanding of the proposal, Respondent's imbalance resolution process is preferable. Yet again, Staff has done little more than propose that the Commission impose on Respondent a tariff provision proposed by Nicor Gas for its program. There is little explanation for how this carry forward proposal would work, why it would be appropriate for Respondent and why Respondent's proposal is inappropriate. Respondent was again forced to respond to this proposal based on its own necessarily limited understanding of what Nicor Gas has in place or has proposed to have in place for its program.

First, Respondent notes that the Commission considered, and rejected, a substantially similar proposal in Docket No. 97-0297. The Commission stated that "[w]ith regard to rolling balances forward from one month to the next month and adjusting the required daily delivery quantity ("RDDQ"), we agree with Respondent that this would cause a two-month lag before imbalances could be incorporated into the RDDQ and thus, there would be an impermissible pricing mismatch." <u>The Peoples Gas Light and Coke Company</u>, Order, dated August 12, 1998, in Ill.C.C. Docket 97-0297, slip op., p. 16. This concern about a pricing mismatch is equally applicable to the carry forward proposal in the instant proceeding.

Second, and related to the pricing mismatch concern identified previously by the Commission, while carrying forward a portion of an SVT Supplier's monthly imbalance to a future month could minimize the monthly cash-outs, this is not an optimal solution. Market prices for gas vary each month and can be dramatically different between months. In other words, if a monthly imbalance in October would result in the SVT Supplier's need to bring in additional gas in December, the SVT Supplier could be disadvantaged by the differential in gas prices. Conversely, if the SVT Supplier brings in less gas than the RDDQ in December due to an over-delivery in October, the disadvantage could be to Respondent's retail sales customers, to the extent Respondent has to purchase additional gas in December to make up for the lower delivery by the SVT Supplier. Resp. Ex. C, pp. 15-16.

Third, Respondent notes that the FERC has had occasion to consider similar issues and has also expressed concerns about the pricing mismatches that result from resolving imbalances "in kind," *i.e.*, through adjusting future deliveries of gas, rather than through prompt cash-out. For example, in a case involving Natural, a major pipeline service provider for Respondent, the FERC stated:

> However, an in-kind make-up system may cause an untimely resolution to the monthly imbalances created by shippers. In *Panhandle* [citation omitted], we considered and rejected requests from parties … that

> we require the pipeline to offer an in-kind imbalance resolution option. We noted that the experience of several pipelines was that increasingly larger imbalances were carried on their books with financial implications resulting along with administrative burdens.

Natural Gas Pipeline Company of America, 63 FERC ¶61,293 at p. 63,051-'02 (1993).

Respondent's proposal to resolve imbalances each month is reasonable and should be approved. Staff and intervenor proposals for a carry forward mechanism for imbalances would create inappropriate pricing mismatches and should be rejected.

D. Respondent's Proposed Rider AGG Charges Are Cost-Based and Reasonable.

1. Rider AGG Charges

Pursuant to Rider AGG, applicable SVT Supplier charges include an Application Charge, an Aggregation Charge and a Customer Pool Activation Charge. Respondent demonstrated that these charges were cost-based and reasonable. Rider AGG also includes an Aggregation Balancing Charge, which is discussed in Section V, *infra*. Staff witness Terrie L. McDonald, based on a careful review of the extensive cost data provided by Respondent, concluded that Respondent provided adequate support to justify the Application Charge, the Aggregation Charge and the Customer Pool Activation Charge. Moreover, she concurred with Respondent's projected undercollection. ICC Staff Ex. 2.0, pp. 3-10. The proposed charges should be approved as filed.

Costs recovered through the Rider AGG charges are costs associated with providing the technical systems developed to support the Program, including any ongoing enhancements and maintenance, as well as costs associated with Program administration, supplier and customer care, and supplier and customer education are recovered through these charges. These costs are projected to reach about $1.33 million through fiscal 2005. About $1.27 million is expected to be recovered during the same period, leaving approximately $54,000 remaining to be recovered. In addition to these uncollected expenses, the Company expects to incur additional ongoing annual operating expenses of at least $109,000. Resp. Ex. A, p. 18; Resp. Exs. 3 and 4.

The Application Charge is a one-time $2,000 charge to be paid by each new applicant. Each month SVT Suppliers would be billed (1) an Aggregation Charge equal to $200 per pool, plus a charge per customer in the pool of $1.25; (2) a Customer Pool Activation Charge equal to $10.00 for each customer added to the pool; and (3) an Aggregation Balancing Charge, which is discussed in Section V, *infra*. As applicable, SVT Suppliers may also be billed imbalance, cash-out and late payment charges. Resp. Ex. A, pp. 17-18.

Aside from Ms. McDonald, who concluded that Respondent provided reasonable support for the charges, no witness presented any cost analysis concerning the propriety of the proposed Application Charge, Aggregation Charge and Customer Pool Activation Charge. Bare assertions that the charges are “unreasonable” or “inappropriate” (New Power Ex. 1.0, pp. 19-23; GCI Ex. 1.0, p. 10) are entitled to no weight. The proposed charges should be approved as filed.

2. LDC Billing Option Charges

The charges for Respondent's proposed LDC Billing Option, a non-utility, non-tariff service, are not set forth in proposed Rider AGG. However, Respondent provided cost support for these charges and agreed to include them in its Schedule of Rates. Resp. Ex. C, p. 31. Like the Rider AGG charges, Respondent demonstrated that the LDC Billing Option charges are cost-based and reasonable. Staff witness McDonald concluded that Respondent provided adequate support to justify the charges. She also concurred with Respondent's projected undercollection. ICC Staff Ex. 2.0, pp. 10-13. The proposed charges should be approved as filed.

The cost of the LDC Billing Option to an SVT Supplier who chooses to purchase this optional service is $0.50 per customer bill with up to five lines of supplier charges. The SVT Supplier could choose to display up to seven lines of charges for an additional $0.02 per line in excess of five. The SVT Supplier could also choose to display a message on each customer bill. The SVT Supplier would be charged $0.01 per message line up to a total of five lines. Resp. Ex. A, p. 10.

The charges would recover costs associated with providing an information system to facilitate the billing service as well as expenses associated with printing and mailing the supplier portion of the bill and processing supplier payments. Respondent's revenue requirement is estimated to be about $484,000 over a five-year period (2001-2005). About $279,000 is projected to be recovered over the same period from suppliers using the LDC Billing Option service, resulting in a cumulative revenue shortfall of $208,000. After the five-year period, the Company expects to incur ongoing annual operating expenses of at least $59,000. Resp. Ex. A, pp. 10-11; Resp. Ex. 2.

Aside from Ms. McDonald, who concluded that Respondent provided adequate support to justify the charges, no witness presented any cost analysis concerning the propriety of the proposed LDC Billing Option charges. The proposed charges should be approved as filed.

3. Alleged Storage Inventory Carrying Cost Savings

Staff witness Dennis L. Sweatman argued that Respondent, due to the implementation of the Program, would realize savings associated with storage inventory carrying costs. He proposed that these savings be realized in the form of credits to Rider SVT customers. ICC Staff Exs. 4.0 and 7.0, *passim*. GCI witness Jerome D. Mierzwa advanced a similar savings theory and argued that the alleged savings should be realized by eliminating certain Rider AGG charges. GCI Ex. 1.0, pp. 11-12; GCI Ex. 2.0, pp. 10-14. The proposed adjustments constitute single issue ratemaking and should be rejected. If, nonetheless, the Commission attempts to recognize the alleged savings, it should do so in a manner that recognizes the base rate nature of the transaction that is the purported origin of the savings.

a. The Proposed Adjustment Is Unlawful Single Issue Ratemaking and Must Be Rejected.

The basis for the savings adjustment is the notion that, because of the storage requirements associated with the Program, Respondent will realize savings from reduced storage inventory carrying costs. It is undisputed that storage inventory carrying costs are costs recovered through Respondent's base rates. ICC Staff Ex. 7.0, p. 6; GCI Ex. 2.0, pp. 11, 12; R. 214, 215, 273. It is undisputed that Respondent has not proposed to change its base rates in this proceeding. ICC Staff Ex. 7.0, pp. 3, 5. Consequently, this is not a proper forum to change Respondent's base rates as they pertain to recovery of costs associated with storage inventory. Notwithstanding that basic premise, the essence of Staff and GCI proposals is to change base rates by diminishing or eliminating the amount of incremental costs to be recovered through Rider AGG. That would be unlawful single issue ratemaking.[6] The indirect manner in which Staff and GCI seek to change base rates does not salvage the proposed adjustment. The Commission cannot do indirectly what it lacks the authority to do directly, and it clearly lacks the authority to engage in single issue ratemaking. The Peoples Gas Light and Coke Company v. The Illinois Commerce Commission, 165 Ill. App. 3d 235 at p. 246 (1st Dist. 1987) ["An administrative agency is created by statute and has no general or common law powers. [citations omitted]."]

The contention that the adjustment merely offsets savings and costs is disingenuous. It mixes apples (cost recovery through base rates) and oranges (cost recovery through riders). Recovery of incremental costs through a rider mechanism, as proposed in Rider AGG, is clearly permissible under Illinois law.

[6] Respondent recognizes that the Commission addressed a similar issue in Cons. Dockets 00-0620 and 00-0621. However, the Commission granted rehearing on the issue of the alleged storage inventory carrying cost savings, and the rehearing proceeding is pending. Accordingly, this issue has not been finally determined by the Commission and is not yet ripe for appellate review in that case.

The Citizens Utility Board v. Illinois Commerce Commission, 166 Ill. 2d 111 at pp. 137-139 (1995) ["In contrast, a rider mechanism merely facilitates direct recovery of a particular cost, without direct impact on the utility's rate of return. The prohibition against single-issue ratemaking requires that, in a general base rate proceeding the Commission must examine all elements of the revenue requirement formula to determine the interaction and overall impact any change will have on the utility's revenue requirement, including its return on investment. The rule does not circumscribe the Commission's ability to approve direct recovery of unique costs through a rider when circumstances warrant such treatment." Id. at p. 138]; The City of Chicago v. Illinois Commerce Commission, 281 Ill. App. 3rd 617 at pp. 627-629 (1996).

Likewise, flowing certain related revenues and savings through a rider is permissible. For example, the Commission's rules governing gas charges require certain penalty revenues and off-system sales revenues to offset recoverable gas costs. 83 Ill. Admin. Code Part 525. Similarly, in the instant proceeding, the revenues from the various imbalance charges and the Aggregation Balancing Gas Charge will flow through the gas charge. However, it is not permissible to change a single element of base rates outside the context of a rate case. That would constitute single issue ratemaking, which is prohibited under Illinois law. Business and Professional People for the Public Interest v. Illinois Commerce Commission, 146 Ill. 2d 175 at pp. 244-248 (1991) ["The rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the *aggregate* costs and demand of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation." (emphasis in original) Id. at p. 244.]; Archer-Daniels-Midland Company v. Illinois Commerce Commission, 184 Ill. 2d 391 at pp. 401-402 (1998). The unlawful effect of the Staff and GCI proposals would be to change a single component of Respondent's base rates.

Carrying costs associated with gas storage inventory are recovered through base rates. Respondent's last rate case, Docket No. 95-0032, provided for recovery of such costs based on the test year used in that case to set rates. If Respondent wished to change the amount it recovers for storage inventory, *e.g.*, because inventory costs or the level of inventory has changed, it would need to file a general rate case. Indeed, if Respondent wished to adjust anything that affects the types of costs it recovers through base rates, it could only do so in a general rate case filing. Similarly, if the Commission wished to change the amount Respondent recovered for storage inventory or anything else through base rates, it would need to initiate a general rate case.

If Staff or GCI had proposed to reduce Respondent's recovery of storage inventory carrying costs by adjusting base rates, this would clearly be improper single issue ratemaking. Instead, Staff and intervenors propose the functional equivalent to a change in base rates. Mr. Sweatman would require that Respondent issue a credit to customers in the amount of the alleged savings, and Mr. Mierzwa would disallow certain Rider AGG charges. The result of the proposals is no different than if they had permitted recovery of Program costs through the proposed Rider AGG charges and simultaneously reduced base rates, *e.g.*, by reducing the Rate 1 or Rate 2 Customer Charge, to reflect the alleged carrying costs savings. Trying to mask the negative impact on recovery of costs included in base rates through a stand alone credit or disallowance of charges cannot alter the legal effect of the proposals -- single issue ratemaking. The proposed treatment of alleged storage inventory carrying cost savings is impermissible and must be rejected.

b. If a Base Rate Adjustment Is Required, It Should Be Determined by Using Relevant Base Rate Data.

Were the Commission to ignore the single issue ratemaking obstacle and order an adjustment for alleged storage inventory carrying cost savings, it should develop the questionable adjustment of base rate costs by using base rate data. A fundamental problem with Staff and GCI proposals is that it is simply not evident that there would be savings associated with decreased purchases of gas for storage inventory. This is because the proposals inconsistently mix gas charge and base rate concepts. For example, underlying their proposals is the notion that, because SVT Suppliers will be delivering gas for purposes of filling storage accounts, Respondent will experience savings because it will not need to purchase gas to fill storage. However, even assuming that there are decreases in daily gas purchases associated with the Program, this does not translate into savings for Respondent. It does not represent savings because, as Messrs. Sweatman (R. 218) and Mierzwa (R. 274) acknowledged, day-to-day gas purchasing and storage activity are reflected in Respondent's Gas Charge, which is a rider mechanism providing for dollar for dollar recovery of recoverable gas costs; changes in purchases do not produce savings for Respondent. Any savings would automatically flow back to sales customers through the operation of the Gas Charge. To benefit Respondent, there would have to be savings associated with costs recovered in base rates, which Respondent has not proposed to change. Resp. Ex. E, p. 4.

Turning to the specific recommendations, Staff and GCI proposals to determine storage inventory carrying cost savings are a mèlange of data that have little do with savings that could be associated with costs recovered through base rates. The obvious starting point for determining savings associated with costs currently recovered in base rates is to evaluate what costs are included in base rates. Staff and GCI, however, ignore the obvious, except when it would produce a larger adjustment.

If the Commission requires an adjustment, it should be computed individually for and credited to Rider SVT customers based on the following: (number of storage days available under Rider AGG) x (54%) x (9.75%) x (11.4¢/therm) = an annual credit per MDQ therm. Using the currently available 25 days of storage would produce an annual adjustment of 15.01¢ per MDQ therm, which is a monthly adjustment of 1.25¢ per MDQ therm. A Rider SVT customer's MDQ, which is its Maximum Daily Quantity, would be determined when the customer enrolls in the Program and on an annual basis thereafter. The application of the adjustment factor to the MDQ would produce the credit. Resp. Ex. E, p. 7. With respect to the factors in the above-described formula:

- The number of days of storage is determined pursuant to an annual filing applicable to all of Respondent's transportation services. As Staff agreed, the number of days would be adjusted annually and, if Mr. Iannello's imbalance carry forward proposal is accepted, it should be reduced by two days. Resp. Ex. H, p. 8; ICC Staff Ex. 7.0, p. 10; R. 222.

- 54% is a proxy for the thirteen-month storage inventory for a year with normal weather. Respondent determined the figure by taking recent data (1997 and 2000) for a somewhat colder and a somewhat warmer than normal year. Resp. Ex. E, p. 5. Staff's proposal to use a weather normalized figure that would be updated annually is not practical. Resp. Ex. H, pp. 3-5.
- 9.75% is the allowed rate of return from Respondent's most recent rate case. Staff and GCI appear to agree upon the use of this factor as a proxy for the storage inventory carrying cost rate. Resp. Ex. E, p. 6.
- 11.4¢ per therm is the cost of gas included in Respondent's base rates. This is the result of dividing $12,446,633 (top gas storage inventory costs in rate base in Docket No. 95-0031) by 109,383,140 therms (top gas inventory in rate base in Docket No. 95-0031). Resp. Ex. E, p. 6.

Staff's and GCI's use of a current market price of gas is the most egregious example of their mixing and matching data to produce an inflated number. Alternatively, it reflects profound confusion about the cost of gas purchased for injection into storage (a current market price that is accounted for in the Gas Charge) *versus* the storage inventory costs included in base rates (a cost derived from the costs and volumes included in Respondent’s base rates). It is a simple concept. The savings at issue are tied to storage inventory carrying costs. Those costs are recovered through base rates. The cost of storage inventory reflected in Respondent’s base rates is 11.4¢ per therm. These are the costs on which Respondent earns a return and these are the costs paid by customers. Applying the allowed rate of return to a current market price of gas simply cannot withstand scrutiny. Resp. Ex. H, pp. 5-6. Moreover, the current market price, including futures prices, is dynamic and fluctuates daily. This has not been addressed by Staff nor GCI.

Nonetheless, if the Commission were to determine that a current gas cost should be used, then it should be paired with a carrying charge rate that is both current and consistent with the type of borrowing that would be associated with the purchase and sale of gas for storage. Specifically, Respondent showed that a one-year LIBOR rate would be appropriate for Respondent. Because of its exceptionally strong credit ratings, Respondent is able to access the lowest available cost of funds in the top-tier commercial paper market. Respondent’s actual borrowing cost over time has proven to be highly correlated to the then current LIBOR. The most current one-year LIBOR rate in the record is 2.5675%, effective for two days from October 15, as published in The Wall Street Journal on October 16, 2001. Resp. Ex. H, pp. 6-7. In Respondent’s proposed formula, this alternative proposal would be: (number of storage days available under Rider AGG) x (54%) x (one-year LIBOR rate) x (market price of gas per therm) = an annual credit per MDQ therm.

Respondent concurs with Mr. Sweatman that this alternative proposal is inferior to the “correct” method, assuming, *arguendo*, that the entire concept does not constitute impermissible single issue ratemaking and there is a “correct” method. Contrary to Mr. Sweatman’s analysis, however, the correct method is to use the storage inventory cost reflected in base rates and the cost of capital reflected in base rates. Nonetheless, the alternative proposal -- which uses a current cost of gas and a current cost of capital -- is superior to the mismatch proposed by Mr. Sweatman and Mr. Mierzwa, *i.e.*, using a current cost of gas and a cost of capital reflected in base rates in a rate case order from six years ago. Resp. Ex. H, p. 7.

In sum, the proposed adjustment for storage inventory carrying costs savings, assuming there are any such savings, would constitute unlawful single issue ratemaking and no such adjustment would be appropriate. If the Commission requires a base rate adjustment, it should be in the form of individually calculated credits for Rider SVT customers and should be determined using the appropriate base rate data pursuant to the following formula: (number of storage days available under Rider AGG) x (54%) x (9.75%) x (11.4¢/therm) = an annual credit per MDQ therm.

E. Allocating Base Rate and Gas Charge Storage Days to SVT Suppliers Is Reasonable.

Respondent’s proposal to make available storage days supported through Respondent’s base rates (“base rate days”) and purchased storage and balancing services (“gas charge days”) is a reasonable way to provide the benefits of additional storage to Rider SVT customers and to match the services provided to SVT Suppliers with the assets for which they are paying. The Rider SVT customers would pay the costs associated with base rate days storage capacity through their existing base rate charges. The costs associated with the gas charge days and the delivery tolerances would be recovered from SVT Suppliers under Respondent's Rider 2, Gas Charge, through the proposed Aggregation Balancing Gas Charge, which is addressed in Section V, *infra*. The number of gas charge days would be determined annually as defined in Respondent's large volume transportation riders. Resp. Ex. A, pp. 16.

Respondent is responsible for balancing daily delivery/consumption differences for Rider SVT customers that are due to weather and demand variability. This balancing takes many forms, including taking operational steps to accommodate differences between actual weather and forecast weather, differences between the RDDQ and SVT Suppliers' pools' actual consumption and differences that result when hourly consumption of SVT Suppliers' pools is not at a constant rate over the course of the gas day. Resp. Ex. A, p. 21; Resp. Ex. G, p. 7.

However, it is difficult to distinguish the assets that are used solely for balancing or storage or a combination of both. Respondent purchases storage services, with related transportation, that provide for seasonal storage and for daily balancing. In general, storage injections result when deliveries exceed consumption, and storage withdrawals result when consumption is greater than deliveries. For most services, the amount of storage capacity determines the injection and withdrawal parameters. These parameters are designed to accommodate injections during the summer and withdrawals during the winter, which defines the seasonal aspect of storage. Resp. Ex. B, p. 6.

In addition, all of Respondent's storage services provide some degree of flexibility in their storage and withdrawal schedules, thereby allowing it to vary the amount of gas injected or withdrawn from one day to the next. Some of Respondent's storage services provide for a limited amount of "out of season" activity (summer withdrawals and winter injections). Lastly, some storage services include a no-notice injection and withdrawal feature. These characteristics make up the balancing aspect of storage. Balancing is an essential component of Respondent's storage portfolio that allows it to adjust to variations between estimated and actual demand that take place on its system. Resp. Ex. B, pp. 6-7.

By the nature of their design, balancing and storage components are inextricably combined in Respondent's storage assets. Accordingly, the Rider SVT customers would be allocated the full number of storage days supported by these services for which the costs are recovered through the Gas Charge. They would receive the full complement of balancing and storage services supported by these assets. The storage days and applicable cost recovery would ensure that retail sales customers do not pay for assets used to balance deliveries and consumption of Rider SVT customers and that Rider SVT customers receive value for the costs that they are paying. Resp. Ex. A, p. 16; Resp. Ex. B, p. 7.

The proposal to offer storage days, in concert with the proposed Aggregation Balancing Gas Charge that will recover the costs of the gas charge storage days and the related balancing services that SVT Suppliers receive from Respondent, is fully supported in the record and should be approved.

F. The Commission Should Not Require Respondent to Include SVT Supplier Standards of Conduct in Rider AGG.

Staff witness Schlaf recommended that Respondent include a “Standards of Conduct” section in Rider AGG. Not surprisingly, the proposed Standards are those that the Commission approved for Nicor Gas. ICC Staff Ex. 3.0, pp. 19-25. Similarly, Citizens Utility Board witness Martin R. Cohen recommended adoption of a Code of Conduct. Mr. Cohen, however, appears to question the value of such a Code when he states that it “is not an effective means of protecting consumers” and characterizes it as “incrementally better than nothing.” CUB Ex. 1.0, p. 3. Unlike Nicor Gas, Respondent did not propose to include such Standards in its tariff, and it demonstrated why it would be inappropriate to impose this quasi-regulatory function on Respondent.

The General Assembly addressed this issue for electric utilities by providing for Commission oversight and certification of ARES. 220 ILCS 5/16-115, 5/16-115A and 5/16-115B. Respondent would support similar legislation for alternative retail gas suppliers, such as SVT Suppliers. That approach, not imposing a policing role on Respondent, would be the appropriate method for monitoring SVT Suppliers. Respondent is not a regulator. It has no authority to investigate alleged violations of the Standards or to enforce such a provision. The vagueness of some of the Standards and the lack of any readily available and objective means of monitoring compliance is troublesome. For example, Standard (g) would require the SVT Supplier to respond “promptly” to customer complaints. Standard (k) would require the SVT Supplier to comply with applicable truth in advertising laws. Standard (l) purports to govern the hours during which telephone solicitation could occur. These are just three examples of standards for which it is not evident to Respondent how it could gather sufficient evidence to be confident that a violation had occurred. Moreover Respondent is not staffed to provide such extensive oversight. Resp. Ex. F, p. 30.

Additionally, the proposal leaves important questions about the Standards unanswered. To give only a few examples, if an SVT Supplier is removed from the Program, could the supplier ever re-apply to participate? What level of supplier noncompliance would permit Respondent to remove an SVT Supplier? Are there noncompliance events that would mandate removal? What obligations does the SVT Supplier have to comply with Company inquiries into a complaint? Neither Mr. Cohen's nor Dr. Schlaf's testimony alleviates Respondent's concerns about assuming the role of trying to regulate SVT Suppliers' conduct, particularly their marketing efforts. Resp. Ex. C, pp. 32-33. Additionally, the lack of Commission authority over SVT Suppliers calls into question what, if any, role the Commission could play in enforcing the Standards. Respondent suspects the Commission would have little interest and probably no authority to indemnify Respondent from any lawsuits resulting from a disgruntled SVT Supplier's removal from the Program, even if that removal had the Commission's imprimatur. CUB Cross Ex. 1.0, Responses to Questions 1.10(i) and 1.10(j). Query why Respondent would open itself, or should be compelled to open itself, to liability and costly litigation from a disqualified SVT Supplier as a result of its efforts to enforce the vague tariff provisions proposed by Staff?

Dr. Schlaf glosses over the enforcement difficulties associated with his proposal. Comparing enforcement of these proposed tariff provisions with other tariff provisions is not an apt analogy. ICC Staff Ex. 6.0, p. 10. It would be relatively simple for Respondent to enforce tariff provisions governing, for example, RDDQ, imbalances, performance assurances, enrollment requirements and service termination because compliance with these provisions can be tested by reference to information within Respondent's control and possession or which it has an express tariff right to obtain from the SVT Supplier. In stark contrast, it is doubtful that Respondent could determine, for example, whether an SVT Supplier engaged in direct marketing or solicitation prior to May 2002, other than by happenstance. *See* proposed Standard (i), ICC Staff Ex. 3.0, p. 23.

In sum, requiring Respondent to adopt Standards of Conduct would place Respondent in the untenable position of acting as a regulator with none of the authority and protections afforded to regulators by law. The proposed Standards of Conduct should be rejected.

G. Respondent's Proposal for Determining the Proper Level of Performance Assurance from SVT Suppliers Is Best-Suited to Reflecting Current Market Conditions.

Respondent's proposed Rider AGG provides that SVT Suppliers must provide "adequate assurances of payment" to Respondent in the form of a parent guaranty, letter of credit or deposit. The amount would be determined annually. Resp. Ex. 1. Mr. Iannello proposed that the performance assurance amount be fixed at $2.00 per therm of the SVT Supplier's pool maximum daily quantity. ICC

Staff Ex. 1.0, p. 22. It is evident from Mr. Iannello's testimony that there is no support whatsoever for the $2.00 figure (R. 249-250), and it should be rejected.

Staff's proposal is simply intended to make this aspect of the Program consistent with Nicor Gas' program. R. 249-250. Setting an arbitrary dollar amount in the tariff does not recognize Respondent's true financial risk or protect Respondent from non-performance by an SVT Supplier. The amount of financial risk varies not only by the size of the SVT Supplier's pool, but also by the SVT Supplier's estimated liability to Respondent. The estimated liability would be based upon costs related to the Aggregation Charge, Activation Charge, Cash-Out Charge, Over-Delivery and Under-Delivery Charges, and the Aggregation Balancing Gas Charge. Estimated liability for the Cash-Out Charges would be based upon NYMEX futures prices, adjusted for the appropriate basis, at the time that the factor is determined. A fixed charge cannot reflect these changing conditions. Resp. Ex. C, p. 9. Respondent's proposal can respond to changing conditions and should be adopted.

IV. Terms and Conditions of Service

Respondent proposed adding a provision called "Operational Integrity" to its Terms and Conditions of Service to provide a tool for Respondent to manage more effectively gas deliveries to its citygates. Resp. Ex. A, p. 22. Respondent fully addressed the limited questions raised in connection with this provision, and this key provision should be approved as filed.

The Operational Integrity provision would enable Respondent, for operational reasons, to limit the quantity of gas that it will accept from suppliers at any of its citygate stations. The provision would apply to all shippers, including Respondent, who have nominated deliveries on the pipeline(s) affected by any limitations or restrictions. Respondent would provide notice of these limitations to shippers no later than two hours prior to the applicable nomination deadline. Resp. Ex. B, p. 3. The two-hour requirement meshes with other important notification deadlines, such as Respondent's notice of a critical day. R. 161.

As an example of how Respondent may implement the provision, it might need to restrict deliveries from ANR Pipeline Company ("ANR") to no greater than 40,000 MMBtu for the next gas day. Respondent would post this notice on its electronic bulletin board and its recorded message hotline to enable shippers to respond accordingly. Respondent would confirm with ANR only deliveries up to the specified limit and according to the pipeline's tariff. Resp. Ex. B, p. 3.

The provision is needed because Respondent's load patterns and load growth fluctuate, and it experiences changes to its transmission and distribution systems. As new pipeline interconnects are added, maintaining efficient operation of its system becomes more complex. Achieving safe and reliable service is also complicated by the fact that each year, as transportation volumes become a greater percentage of the supplies entering Respondent's system, less volume is under Respondent's direct control. Resp. Ex. B, p. 4. Large volume customers make up approximately 35% of the annual load on Respondent's system. Also, a review of the last four years shows that these customers' daily deliveries have ranged from a low of 13% of system sendout to a high of 111% of system sendout, with considerable day-to-day variability. Resp. Ex. D, pp. 12-13.

Given the lack of direct control over the quantity of gas coming into its system and the pipelines on which it is delivered, Respondent must secure the cooperation of all shippers in order to maintain the required balance of supplies entering its system. It is important to make this change in connection with this filing, which will increase the transportation volumes delivered to Respondent's system. Resp. Ex. B, p. 4.

V. Rider 2, Gas Charge

Respondent proposed revisions to Rider 2 to add a new type of gas charge, the Aggregation Balancing Gas Charge, that would apply to SVT Suppliers based on their pool's consumption. This new gas charge would appropriately recover Respondent's costs associated with the purchased storage and balancing services that support the storage service provided to SVT Suppliers, specifically the gas charge rates storage days discussed previously, and associated balancing. As with other gas charges determined pursuant to Rider 2, Respondent would determine and file the Aggregation Balancing Gas Charge each month. The Aggregation Balancing Gas Charge would be equivalent to the Non-Commodity Gas Charge determined under Rider 2 less any firm transportation costs not associated with balancing or storage. The amount collected from SVT Suppliers under this charge would be credited to remaining non-transportation customers through the Gas Charge. Resp. Ex. A, pp. 21-22.

Recovery of these costs from SVT Suppliers would ensure that retail sales customers do not subsidize these services. Other than a proposed wording change to the tariff language, which Respondent accepted, there was no opposition to this charge. Resp. Ex. A, p. 21; Resp. Ex. F, p. 29. The proposed changes to Rider 2, as revised by Mr. Iannello (ICC Staff Ex. 1.0, p. 24), should be approved.

VI. Other Issues

A. Uniformity

As is evident from the record in this proceeding, several recommended changes to the Program are predicated on little more, and in many cases, nothing more, than imposing on Respondent requirements proposed by and approved for Nicor Gas. Uniformity solely for the sake of uniformity is not a reasonable goal, and the approach in the instant proceeding has two significant legal deficiencies.

First, the decision in this case must be based on the record that is being developed and the merits of Respondent's proposals. A decision that lacks record support cannot withstand appeal. The Commission's decisions must be supported by substantial evidence. Abbott Laboratories at pp. 713 and 715.

Second, the instant proceeding is being conducted pursuant to Section 9-201 of the Act. Respondent's responsibility under Section 9-201 is to meet its burden of showing that its proposals are just and reasonable. 220 ILCS 5/9-201. Respondent is not charged with showing that Staff or intervenor proposals are unjust or unreasonable or with showing that its proposals are better than the Staff and intervenor proposals. The mere fact that Staff, intervenors or even the Commission may prefer a different approach does not render Respondent's proposals unjust and unreasonable. Respondent presented substantial evidence in support of the justness and reasonableness of its proposals. Having presented a *prima facie* case in support of its proposals, the burden of going forward with the evidence shifted to Staff and intervenors. Board of Trade of the City of Chicago v. Dow Jones & Company, Inc., 108 Ill. App. 3d 681, 686 (1st Dist. 1982) ["'the burden of proof' has two aspects: (1) the burden of producing evidence as to a particular matter; and (2) the burden of persuading the trier of fact as to the existence of the fact asserted. The burden of producing evidence, which is sometimes called the burden of going forward, shifts from party to party during the course of the trial, but the burden of persuasion … does not shift."] In response to Respondent's case, Staff and intervenors presented alternative terms and conditions, supported by scant evidence, under which to conduct a small volume customer transportation program. They did not meet their burden of going forward nor refute Respondent's *prima facie* case that its proposals are just and reasonable and should be approved by the Commission.

Aside from the legal considerations, if the record in this case is ignored for the sake of uniformity, other utilities could be discouraged from proposing small volume transportation programs. Resp. Ex. C, p. 4. Moreover, a "one size fits all" approach simply makes no sense when discussing tariff proposals that are the product of operational considerations. With respect to many operational issues, there are significant differences between the assets available to Nicor Gas and those available to North Shore. To give a few examples, the appropriate tariff provisions governing storage management, imbalance management, tolerances and related gas supply matters are strongly influenced by the specific operational facts of North Shore's system. What was reasonable for Nicor Gas given its particular portfolio of assets would often be unreasonable for North Shore. It would be no more appropriate for the Commission to require Respondent to adopt the provisions of the Nicor Gas program, approved by the Commission based on the record in that proceeding, than it would be for the Commission, after determining provisions that are appropriate for Respondent based on the record in this proceeding, to turn around and order Nicor Gas to implement Respondent's provisions solely for the sake of uniformity. Resp. Ex. D, pp. 2-3.

Respondent strongly urges the Commission to review Respondent's proposal on its own merits and not try to shoehorn its Program into the Nicor Gas program. The Commission's experience with uniformity issues for the electric utilities is ample proof of the difficulty of imposing uniformity, even in the context of a docketed proceeding devoted to that issue. *See* Docket No. 00-0494. If, in fact, the Commission has an interest in uniformity among gas utility choice programs, a piecemeal approach that penalizes utilities that do not file first is not a sound way to achieve uniformity.

B. Implementation Dates

Respondent proposed a May 1, 2002 implementation date for its the Program. This date makes sense for several reasons. First, it coincides with the beginning of the traditional storage injection season. Second, it allows Respondent and suppliers adequate time to prepare for implementation of the

Program, including developing an appropriate customer education campaign and making necessary modifications to customer information and billing systems. Third, it corresponds with the initial unbundling of residential services by electric utilities. Development of an adequate customer education program and necessary systems changes assume that this proceeding will be completed two or more months in advance of the implementation date. Resp. Ex. A, pp. 4-5. If the Program is approved in substantially the form proposed by Respondent, the May 1, 2002 implementation date is feasible. However, if significant changes are required, this could delay implementation. *See, e.g.*, Resp. Ex. C, pp. 8, 17; Resp. Ex. F, p. 8; R. 197-202.

Respondent estimated, based on information available to it at the hearing and based on its incomplete understanding of certain Staff proposals, that implementing Mr. Iannello's various proposals could take as much as an additional six months from the date of the final order. R. 197-200. Implementing Rider SBO, as proposed by Respondent and without any of the changes proposed by Mr. Iannello that Ms. Egelhoff identified as difficult to implement, would take approximately six months from the date of the final order. R. 201. If the Commission ordered Respondent both to implement all of Mr. Iannello's proposals and to implement Rider SBO, with changes proposed by Staff and intervenors, the implementation delay could be as long as eighteen months from the date of the final order. R. 200-202. Accordingly, if the Commission orders the implementation of the proposals identified by Respondent's witness Egelhoff as being time-consuming to put in place, then either the implementation date of the Program should be extended accordingly or implementation of the problematic proposals should be delayed, preferably the latter.

C. Third Party Monies

Making Rate 1 customers eligible for the Program requires Respondent to enter into an agreement with the Illinois Department of Commerce and Community Affairs (“DCCA”) to determine the distribution of energy assistance (*i.e.*, LIHEAP) grants among the utility and suppliers on behalf of participating customers. Resp. Ex. A, p. 7. In the case of LIHEAP funds, the money received would be applied to those charges defined in an agreement between Respondent and DCCA. Although an agreement had not been executed at the time pre-filed testimony was submitted, Respondent had informal discussions with DCCA in which the parties tentatively agreed that Respondent would use the following payment processing schedule: all utility arrearages; all SVT Supplier arrearages; current utility charges; and current SVT Supplier charges. These LIHEAP funds would be shared with any SVT Supplier, regardless of whether the supplier uses Respondent’s LDC Billing Option. Resp. Ex. C, pp. 33-34.

D. Customer Education

It is important to Respondent that customers be educated about the Program and have the information they need to make intelligent decisions about whether to participate. Customer education was also addressed by Staff and intervenors. Respondent participated in the customer education workshops hosted by Nicor Gas. However, Respondent’s education proposals are still a work in progress; at this point it would premature and perhaps even redundant to order workshops without assessing the outcome and any benefits of the Nicor Gas workshops. Respondent would be open to considering the suggestions made by the parties at these workshops, and if necessary, holding additional workshops. However, Respondent is concerned about the recovery of additional costs that would be incurred by additional educational requirements that may be required of it; it will not propose costly initiatives if it must bear the costs of those programs. Moreover, other participants and stakeholders in the Program should be required to share the responsibility and accountability to educate customers. Resp. Ex. C, pp. 35-36; Resp. Ex. F, pp. 27-28.

WHEREFORE, North Shore Gas Company respectfully submits its Initial Brief in this proceeding and requests that the Commission approve the Choices For You^{sm} Program as filed by Respondent, with certain revisions proposed by Respondent during the proceeding. Respondent's proposals are fully supported by the record.

Respectfully submitted,

North Shore Gas Company

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Dated at Chicago this
20th day of November, 2001

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion v. North Shore Gas Company Proposal to implement Riders SVT and AGG, and revise Rider 2, Terms and Conditions, and Table of Contents	)))))))))))	Docket No. 01-0469

NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Service List

PLEASE TAKE NOTICE that on this 20th day of November, 2001, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Initial Brief of North Shore Gas Company, a copy of which is hereby served upon you by e-mail, by messenger, by overnight courier and/or United States Mail on November 20, 2001.

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